

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Preemption of State and Local Zoning and
Land Use Restrictions on the Siting
Placement and Construction of Broadcast
Station Transmission Facilities

)
)
)
)
)
)

MM Docket No. 97-182

To: The Commission

**COMMENTS OF BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM**

Board of Regents of the University of Wisconsin System ("UWS"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rule Making regarding the above-referenced proceeding.^{1/} The NPRM seeks comments on the petition filed jointly by the National Association of Broadcasters and the Association of Maximum Service Television ("Petitioners") and related matters concerning the scope of any preemption of state and local laws in light of the Commission's commitment to a rapid roll-out of digital television ("DTV").^{2/} UWS supports the Petitioners and the Commission's efforts to obtain a detailed record in determining whether to exercise federal powers of preemption. Accordingly, in response to the Commission's request for information, UWS relates its current experience in

^{1/} *Preemption of State and Local Zoning and Land Use Restrictions*, Notice of Proposed Rule Making, rel. Aug. 19, 1997 (the "NPRM").

^{2/} *See, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket 87-268, 7 CR 863 (April 22, 1997).

No. of Copies rec'd
List ABCDE

07 4

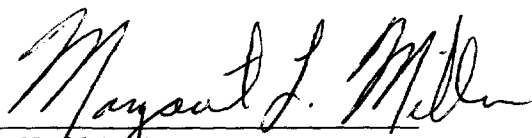
attempting to construct a new antenna tower for its authorized noncommercial educational student radio station, WSUM(FM), Madison, Wisconsin.

The attached exhibit (Attachment 1), a memorandum prepared by the station general manager and others, details UWS's experience, and demonstrates that UWS has experienced delays and spent scarce public resources in its effort to construct its new broadcast facility.

UWS respectfully asks that the Commission add these comments to the record as it examines whether to exercise federal preemption power.

Respectfully submitted,

**BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM**

By: 
Todd D. Gray
Margaret L. Miller

Its Attorneys

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
202-776-2000

Dated: October 30, 1997

ATTACHMENT 1

REPLY TO FCC REQUEST FOR COMMENTS

We generally agree that the Federal Communications Commission is the best agency to address tower siting, under its authority as the regulator of signal overlap. Because state and local authorities can and do take the opportunity to more strictly regulate tower siting, often without any knowledge of, or consultation with, the FCC regulations already in place, the system of siting towers is extremely cumbersome and unnecessarily political. In addition, the delays that result are needlessly costly. There is no need to restrict FCC preemption to DTV towers, FCC preemption is a course we would recommend for all television and radio transmission towers.

In our particular case, we received an FCC Construction Permit in October of 1996 and still do not have a tower. We have been hampered by complicated county ordinances and restrictions that has put undue financial stress on our project. The most optimistic estimate is a completed tower by July of 1998. Specifically, this is our situation:

- Our tower siting application was approved unanimously by the town land use committee, which noted that it did not conflict with the town's land use plan (see Appendix A).
- A 700-acre landowner in our area has agreed to lease us land for the tower, as a way of keeping his farm going and providing for his family. He will be the closest neighbor to the tower.
- As a show of good faith, we have offered a free easement for him to continue to grow his crops around the base of the tower and guyed wires.
- A handful of residents are objecting on the grounds of health, safety, property value, and aesthetic issues. They have offered no evidence that we pose a risk in these areas, and refuse to consider our evidence that addresses these issues.
- The objectors have found a sympathetic ear in the town board chair, who seems to resist any change of any kind for any reason. When asked if there were any circumstances under which he would examine the evidence before him, prior to making a decision he said 'no'.
- The objectors are small acreage residents, most of whom use the township as a bedroom community.
- In spite of evidence that there are no ill effects other than the visual problem residents have with the tower, the tower has yet to be approved locally.
- Ignoring the state's Open Meeting Law, the town passed a tower moratorium (without public announcement or including it as an agenda item at the meeting in which it was ratified) after we withdrew our petition.
- The town passed a very restrictive tower ordinance (see appendix B).
- Because we are a state agency, we can get special dispensation from the county, but if we were a private entity, our tower application would be disapproved now and for the foreseeable future.

This case is an example of local zoning regulation standing "as an obstacle to the...institution and improvement of broadcast service generally" (FCC Petition Docket # 87-268, FCC 97-116). In addition, our local newspapers have reported at least two other cases recently, in which opposition to towers has impeded their progress.

- In the first case, residents have hired an attorney to press for the removal of the Larkin tower on Hoyt road in Madison.
- In the second case, the mayor of Madison is trying to prevent construction of a PCS tower by PrimeCo of Dallas, TX. The tower is allowed under current zoning laws.

Please do not limit preemption to large markets or DTV, as all licensees need the FCC to step in when towers face undue pressure. This pressure changes the tower construction process from a technical one to a political one, which has a significant impact on how elected officials behave, i.e. elected officials often bow to political expediency rather than the local zoning laws and policies.

It should be noted that we agree it is right and proper for area neighbors to raise concerns about towers in their towns and counties. However, there is a problem at the local level. Procedures are seen as a nuisance rather than a guide. As such, there are no pre-ordained steps which ensure that towers which pose no health and safety problems can be constructed. Without FCC preemption, we are left to the whims of those who choose not to become familiar with the facts of a particular proposal. In our case, the comment by the town board chair that "I never owned a new car, why do you need a new radio station?" sums up our dilemma. He has refused to look at the facts of the case. With a wave of the hand, he says we can just go somewhere else. Try explaining signal contour protection to him and it gets you nowhere.

As we have outlined, the local authorities pass judgement in areas that are exclusively in the purview of the FCC, such as the need for a new radio station, who should run the station, what kind of programming is proposed. Further, they presume to pass judgement on issues of concern only to the FAA; how high will the tower be, we don't want it painted, no lights no matter how tall.

In summary, using our experience as a case study, we petition the FCC to not limit preemption to DTV towers.

Appendix A refers to Montrose Land Use Plan, with which we are clearly in compliance. Please particularly note that generally, the town's land use objectives seem to support a farmer leasing land for a tower, especially when (as in our plan) he can continue to grow crops around the base of the tower and between the guyed wires. Our plan helps him keep his farm going, provides him a free easement for the land, and does not put

the town/counly in a position where they have to build new roads, provide more sewer/water facilities.

Appendix B refers to Montrose Tower Ordinance. Please especially note:

- II.A.8 -- Town must approve all phases of the construction, including landscaping.
- III. \$500 application fee is excessive. Paying the fee gives the town the right of approval over the tower siting.
- IV. Town board must approve plans and specifications for the tower design.
- V. Color and camouflaging dictated by the town, monopole is only acceptable style of tower.
- VI.B. Town board reserves sole discretion over integration of towers into steeples, silos, light standards, etc.
- VII. Tower height limited, which usurps FCC authority
- VIII.A. Towers not to be illuminated by artificial means
- IX. Only the town can exempt a tower, but it can never exempt a broadcast tower.
- XI.D. Any person, for any reason, can prompt the board to inspect the tower at operator cost (emphasis added).
- XII.B. Town Board reserves right to monitor interference levels (and presumably object capriciously)
- XIII. Overrides FCC authority on radiation requirements
- XVII.B. Ground-mounted equipment screened from view to the satisfaction of the town board
- XVIII.A. "Any tower found to be structurally unsafe" (no regulatory body defined, so we suppose any citizen can find it unsafe) "must be removed at owner expense."
- XIX.B. Amount equal to 10% of tower's construction cost must be deposited with the town as a bond against applicant's requirement to remove tower when so ordered by the town.
- XXI. Town has right to review tower every two years, and change its land use plan to disallow the tower, thereby causing it to be torn down at town's behest.
- XXIII. Overrides FCC authority to allow collocation
- XXVI. Visual Impact Statement makes it unduly difficult and expensive to assess the tower's visual impact and does not take into account existing topographical depictions which can aid in assessing tower visibility.
- XXVII. Benefit to the town itself must be established before approval for tower construction can be given.
- XXVIII. Town ordinance claims to supersede all state and county ordinances, and it claims to comply with the 1996 Federal Telecommunications Act.

APPENDIX ~~EA~~

TOWN OF MONTROSE

LAND USE PLAN

ADOPTED FEBRUARY 9, 1981

RESOLUTION ADOPTING

Dane County Land Use Plan
and
Amended Montrose Land Use Plan

WHEREAS, the Town of Montrose adopted the Montrose Land Use Planning Goals and Policies September 11, 1978;

WHEREAS, experience has shown that revisions to the Plan were needed;

WHEREAS, the Town Planning Committee has prepared a Re-Draft of the Plan, held an information gathering meeting February 2, 1981, and recommended adoption of the amended Plan;

WHEREAS, the Town of Montrose seeks to cooperate with Dane County and other local units of government, and have this amended Plan become part of the Dane County Farmland Preservation Plan;

NOW, THEREFORE, pursuant to sections 66.945(12), 61.35 and 62.23 of the Wisconsin Statutes:

BE IT RESOLVED, that the Dane County Land Use Plan and the whole thereof as refined and detailed to apply specifically to the Town of Montrose be and the same is hereby adopted;

BE IT FURTHER RESOLVED, that the Town of Montrose Land Use Plan as amended be and the same is hereby adopted;

BE IT FURTHER RESOLVED, that the amended Town Land Use Plan, including all maps and materials, be forwarded to the Regional Planning Commission and County Zoning Committee for review and approval.

Town of Montrose

2/9/81
Date Adopted

Paul L. Luccan
Chairman

Leo Kelly
Supervisor

Doug Hall
Supervisor

Deanna Duggan
Clerk

TOWN OF MONTROSE

LAND USE PLAN

I. INTRODUCTION

The Town of Montrose is a primarily rural town in south central Dane County. However, its proximity to Madison has brought residential development pressures to the community during the 1970's. Although the Town of Montrose is a farming area, two rural settlements, Basco and Paoli, are located in the town along State Highway 69. Paoli, settled by the French and later the Irish, German and Swiss is a residential area interspersed with small businesses and manufacturers.

Most of the town land is farmed with more than 19,200 acres assessed as agricultural in 1978. Forest and wetlands make up more of 1,500 acres of the town land use. The town is bordered on the east and west by ridgelines which form minor drainage divides for Sugar River, which drains the southwest part of the county. Meridian and Dickerson type soils make up some of the best farmland, which is located in the central valley of the town between the ridgeland.

Although the Town of Montrose has not experienced major developments the number of homes built and lots created are increasing as shown in the background tables. Concerns about the protection of Montrose high quality farming areas have prompted local officials to prepare a plan for their town.

II. PHYSICAL CHARACTERISTICS

During the process of preparing a plan for the town, the following six maps were compiled. These maps were utilized together with statistical information to evaluate a future course of action for development.

Map 1. Prime Farmland and Farmland of Statewide Significance based on soil productivity classification of the U.S.D.A., Soil Conservation Service.

Map 2. Soils Limited for Septic Tank Absorption Fields interpreted from surveys done by the Soil Conservation Service.

- Map 3. Water Resources prepared from U.S. Geological Survey Topographic Sheets.
- Map 4. Woodlands identified from interpretation of 1976 air photos by the Dane County Regional Planning Commission.
- Map 5. 1977 Land Use based on DCRPC surveys compiled in 1970 and updated in 1977.
- Map 6. Zoning as obtained from the Dane County Zoning Office.

III. DEVELOPMENT CHARACTERISTICS

Part of the planning process involves the review of information indicating changes in the town's development. These data are summarized in the following three tables:

TABLE 1

TOWN OF MONTROSE POPULATION GROWTH

<u>Year</u>	<u>Population</u>	<u>Change</u>	
		<u>Number</u>	<u>Percent</u>
1950	812	-22	- 2.6
1960	831	19	2.3
1970	962	131	15.8
1979	1049	87	8.9

Source: 1950-1970 U.S. Census of Population, 1979 Wisconsin Department of Administration estimate and compiled by Dane County Regional Planning Commission.

TABLE 2

TOWN OF MONTROSE HOUSING UNITS AND
LAND DIVISIONS

<u>YEAR</u>	<u>RESIDENTIAL BUILDING PERMITS ISSUED</u>	<u>PARCELS CREATED</u>
1970	7	-
1971	5	-
1972	9	-
1973	10	3
1974	6	3
1975	4	5
1976	13	37
1977	13	6
1978	8	3
1979	7	7
Total	82	64
Average Per Year	8.2	9.1

Source: Dane County Regional Planning Commission

TABLE 3

FARM STATISTICS FOR THE TOWN OF MONTROSE

	<u>1967</u>	<u>1976</u>
Number of Farms	111	81
Average Farm Size (Acres)	190	222
Acres of Farmland	21,064	17,956
Acres of Corn	5,630	6,031
Acres of Hay	4,736	4,892
Acres of Oats	2,061	1,657
Acres of Soybeans	214	123
Acres of Pastureland	8,600	5,118
Number of Milk Cows	2,543	1,149
Number of Hogs	1,898	3,059
Number of Beef Cattle	980	107
Number of Other Cattle Marketed	260	1,782

Source: Wisconsin Assessor Farm Statistics

TOWN OF MONTROSE
LAND USE - OBJECTIVES AND POLICIES

IV. PURPOSE OF PLAN

The ultimate goal of this plan is to preserve the productive farmlands of the town for continued agricultural use and to protect farm operations from conflict with non-farm uses. Therefore, all lands within the town are designated as agricultural except those that are zoned for another use. Any request for rezoning or development will be evaluated in light of the policies of this plan by the Planning Committee and Town Board.

The Objectives Of This Plan Are To:

1. Preserve agricultural land in the town.
2. Preserve existing farm operations and residential areas.
3. Protect the natural environment such as lakes, ponds, lowlands and wooded areas, etc.
4. Permit limited residential development as long as it does not conflict with the other objectives.
5. Permit limited development that enhances the growth of agriculture in the town.
6. Maintain a balance between the rights of all citizens and that of the individual.
7. Preserve the rural character of the town.

Agricultural Policy

1. Agricultural Preservation Areas shown on the Plan Map are to protect farm operations for future production from encroachment of incompatible uses and help qualify farmers for benefits of the Wisconsin Farmland Preservation Program.
2. To allow for no subdivisions in agricultural preservation areas.
3. To allow farm residences for those who earn a substantial part of their livelihood from farm operations. To provide for an additional farm residence for parents or children of the farm operator if the conditional use standards of the exclusive agricultural zoning district are met and all town policy criteria are met. These houses will count toward the one lot per 35 acres overall density of Policy 4.

4. To limit non-farm residential development to those areas with soils not classified as prime farmland or those of statewide importance (as shown on soil map).
 - Lot size, 2 acres minimum.
 - Density limited to one lot per 35 acres of farm owned as of September 11, 1978.
 - No roads or driveways shall be permitted to cross agricultural land to reach proposed non-farm development.
 - All lots will be required to front on a public road. The use of common drives is encouraged to minimize the number of access points along town roads.
 - Lots will be rezoned from agriculture if all policy criteria are met.
5. To provide for a one-time replacement of the existing farm residence with a new residence for the farm operator. These limitations do not apply to farm houses destroyed by wind, fire and other Acts of God. Disposition of the old farm residence by demolition would require no zoning change, however, separation and sale of the old farm residence would have to meet all policy criteria of the plan, land division and zoning change requirements. These new houses will count toward the one lot per 35 acres owned overall density of Policy 4, unless the old residence is demolished.
6. To provide for separation of farm dwellings and related structures which existed prior to September 11, 1978 and which remain after farm consolidation. The other agricultural policies will be applied to such separations insofar as possible. These separated houses will count toward the one lot per 35 acres owned overall.
7. To provide for the separation and retention of one lot for a new residence for the farm operator when he or she sells the whole farm. The agricultural policies will be applied in reviewing such proposals. If all other policies can be met, but there is no soil area that is not classified as prime farmland or those of statewide importance (as shown on soil map), this soil criteria may be relaxed at the discretion of the Town Planning Committee and Board. These lots will count toward the one lot per 35 acres overall density of Policy 4.
8. To avoid any substantial expenditure of public funds and the incurrence of municipal debt for construction or provision of municipal improvements and services usually associated with urban residential areas which are neither needed nor essential in rural agricultural areas.

Commercial Policy

1. To require all commercial development to be served by public sewer and water with the following exceptions:
 - a. To allow for commercial development needed to support existing agricultural activities, where it will not result in environmental degradation or conflicts with farming operations.
 - b. To rezone only that portion of land necessary for the contemplated use when rezoning is requested.
2. To avoid any substantial expenditure of public funds and the incurrence of municipal debt for the construction or provision of municipal improvements and services usually associated with commercial and industrial development.

Resource Protection Policy

1. To identify and protect the unique natural resources such as: floodplains, wetlands and woodlands.
2. To insure that floodplain areas are protected from development or filling to maintain their natural flood accommodation capacity.

Public Lands

The town has extensive acreage which is owned by the Wisconsin Department of Natural Resources. The Madison School Forest is partially located in the northwest portion of the town. The town intends to take the following steps:

1. To maintain contact with DNR to insure input and participation from town officials and citizens concerning acquisition.
2. To insure that such land acquisitions and subsequent use conform to the goals and objectives of the town plan.

V. PLAN IMPLEMENTATION

1. The Town of Montrose has adopted the A-1 Agricultural District (Exclusive) of the Dane County Zoning Ordinance effective September 11, 1978, which applies to all lands previously zoned A-1 Agricultural. Therefore, nearly all land use changes will require rezoning. It is the intent of the town to apply the Town Plan Policies and Objectives in the evaluation and decision of each proposed zoning change.

2. Environmental protection is an objective of the plan, which is partially implemented through the Floodplain Zoning District; however, there is provision in the ordinance for some filling and development. The intent of the town is protection of these areas from filling and development. There are, in addition, areas beyond the floodplain which need protection and Conservancy Zoning will be considered for those areas. The town will continue to monitor and take positions on legislation proposed to protect such lands and provide some benefit to landowners of such lands.
3. Commercial and Industrial Development policies will be implemented primarily through zoning changes.
4. The primary policy for Agricultural Lands is preservation, with limited development allowed on less productive lands. This limited non-farm development has a 2 acre minimum lot size, which will be implemented through appropriate use of the Residential Zoning Districts. The "density of one lot per 35 acres within a farm unit" means that someone who owns 150 acres could create up to 4 lots if all other policies were met. The one lot per 35 acres is meant literally with no fractions allowed. Thus, someone owning 130 acres would be allowed a maximum of 3 lots, while an area of 140 acres would be allowed 4 lots. In computing the acreage owned, it is that acreage owned excluding all public road rights-of-way. The lots may be together in a cluster or at scattered points depending upon individual desires and circumstances. For clarity the "farm unit" will include the land holdings as of September 11, 1978. This number of allowable lots will apply until a change is made to the plan.

It is also recognized that additional farm residences are allowed in the A-1 Agricultural (Exclusive) District, " . . . occupied by a person who, or a family of at least one member of which earns a substantial part of his or her livelihood from farm operations on the farm parcel." There is also provision for one residence per farm under the conditional use provisions for parents or children of the farm operator. In reviewing applications for these conditional uses, the town will apply the Town Land Use Plan policies to the maximum extent.

5. The town recognizes the importance of woodland and steeper slopes as being valuable to the natural habitat and scenic value of the area. Provisions to safeguard these areas from harmful development are provided for in the Land Use Plan.

VII. LAND USE PLAN REVIEW AND REVISION

It is recognized that the Town Land Use Plan will require periodic review and revisions as more information is gathered, public attitudes change and experience is gained in plan implementation. As a means of assuring this possibility for change and improvement, a formal annual review period is hereby established. Each year from January 1 through January 31, a formal notice will be prominently posted at the Town Hall and placed in the local papers notifying citizens of the plan review process.

Petitions to amend the plan should be submitted in writing to the Town Planning Committee on or before January 31. These petitions will be reviewed by the Planning Committee with a public hearing to be held the fourth Monday in February to discuss the petitions. The Committee will then consider the hearing testimony, conduct any further study and make recommendations for action to the Town Board. The Board will consider the recommendations and make decisions.

The Committee may consider amendments at other times at the request of the Town Board. The first period for submission of petitions will be January 1982.

APPENDIX 1

DEFINITIONS

Agricultural Land

Areas identified on the Town Plan as being most appropriate for preservation as long-term farm agricultural use based upon soil type, historical use, owner commitment, degree of investment, natural features, parcel size and adjacent land uses.

Developed

A lot is developed when the house is complete and a certificate of occupancy has been issued.

Extraterritorial Jurisdiction

The unincorporated area within 1-1/2 miles of the corporate limits of a city of the fourth class or a village.

Floodplain

The land adjacent to a body of water which has been or may be hereafter covered by flood water.

Rural Non-Farm Areas

Those areas identified on the Town Plan as the location of new or additional residential areas at rural densities.

Shoreland Area

All lands in the unincorporated area of the town which are 1,000 feet from the normal high water mark of any lake, pond or flowage listed in Surface Water Resources of Dane County published by Conservation Commission, 1961; and all lands which are 300 feet from the normal high water line or to the landward side of a floodplain of the navigable reaches of rivers and streams.

Strip Development

The development of a series of commercial or residential land uses generally one lot deep along a road or highway with each use usually requiring an access to the road.

Subdivision

A division of a parcel of land where the act of division creates:

- (a) five or more lots, parcels or building sites of 35 acres each or less in area; or
- (b) five or more lots, parcels or building sites of 35 acres each or less in area by successive divisions within a period of five years.

Urban Service Areas (Municipally Associated)

Those areas identified on the Town Plan adjacent to the Village of Belleville determined to be most suitable for new or additional development at urban densities and providing the full range of public services.

Urban Services

Include those services that should be provided in urban areas with particular emphasis on facilities on or in the land as a part of the development process such as sanitary and storm sewer and water supply and distribution.

Wetland

Land areas characterized by high water table, the presence of surface water at any time during the year, predominantly organic soils and aquatic vegetation.

APPENDIX **B**

Town of Montrose

Proposed Communication Tower Ordinance

June 4, 1997

I. Ordinance Intent**A. It is the intent of this tower ordinance to:**

1. Balance the rights of private property owners with the needs of the Montrose community-at-large.
2. To minimize adverse visual effects of towers through careful design, siting, and vegetative screening;
3. To avoid potential damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structure;
4. To allow for reasonable location and use for communication towers; and
5. To mitigate and address the potentially adverse effects of communication towers on human health and safety.

II. Tower Zoning Applications**A. A building permit and conditional use permit (if applicable) shall be obtained prior to construction of communications towers. Towers shall be registered with the Town of Montrose at the time the permit is obtained. Each application for a permit shall include the following information, supplied by the tower owner, operator, or contractor installing the tower.**

1. Name and address of the tower owner;
2. Name and address of the tower operator;
3. Name, address, phone number and title of primary contact person;
4. Address and short legal description of the tower location;
5. Principal use of the tower;
6. Tower height;
7. A list of appurtenances mounted on the tower including model numbers, if available, and their location on the tower, or a drawing indicating location;
8. A site plan prepared by the owner or his/her representative drawn to a scale of one inch (1") equals fifty feet (50') unless a different scale is approved by the Town Board or appropriate Dane County authority. The plan shall show the property boundaries, tower(s), guy wire anchors (if any), existing structures, proposed buildings and/or other accessory uses, access, parking, fences, landscape plan. (specifying size, spacing and plant materials proposed), existing land uses adjoining the site, distances to all adjoining property.

- B. Towers shall be subject to all applicable Wisconsin State and Dane County design codes.
- C. The tower zoning application shall be accompanied by the following impact statements:
 - 1. Environmental Impact Assessment (Article XXV).
 - 2. Visual Impact Assessment (Article XXVI).

III. Application Fees

- A. The Town of Montrose requires an application fee of \$500 for the registration, processing, and permitting of communication towers. No application shall be considered filed with the Town of Montrose unless and until said application is accompanied by the fee.

IV. Tower Construction

- A. Plans and specifications for the tower design as specified by the tower manufacturer or as approved by a registered professional engineer experienced in the design and/or analysis of communication towers shall be submitted to the Town Board by the tower owner, operator, or contractor installing the tower.

V. Tower Design Requirements

- A. Proposed or modified towers and antennas shall meet the following design requirements.
 - 1. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
 - 2. Towers shall be of a monopole design unless the Town Board determines that an alternative design would better blend in to the surrounding environment.
 - 3. Lattice type towers, or any other tower design requiring guy-wire support, shall not be permitted owing to the perceived adverse visual impact of such towers on the rural landscape of the Town of Montrose.

VI. Tower Set Back Requirements

- A. Towers shall conform with each of the following minimum setback requirements:
 - 1. Towers shall be set back from all residential and commercial buildings by a minimum distance equal to three times the height of the tower including all antennas and attachments. Barns and other livestock shelters are included in this setback requirement.
 - 2. Towers shall be setback from all adjacent property lines by a minimum of three times the height of the tower including all antennas and attachments.
 - 3. Towers shall be set back from current and planned public rights of way by a minimum distance equal to twice the height of the tower including all antennas and attachments.

4. Towers shall not be located between a principal structure and a public street, with the following exceptions:

- a) In industrial zoning districts, towers may be placed within a side yard abutting an internal industrial street.
- b) On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.

B. A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Board, to allow the integration of a tower into an existing or proposed structure such as a church steeple, silo, light standard, power line support device, or similar structure.

VII. Tower Height

A. Tower height shall be limited to a maximum of 175 feet including all antennae or attachments.

VIII. Tower Lighting

- A. Towers shall not be illuminated by any artificial means.
- B. No tower shall be permitted to be constructed in the Town of Montrose, that as a result of its design or location, would be required to be lighted in accordance with FAA directives.

IX. Exclusions

- A. Communication towers designed and intended for private non-commercial use shall be exempt from this ordinance unless the planned tower height is greater than forty (40) feet.
- B. All existing towers located in the Town of Montrose are exempt from these regulations except for the Collocation Requirements in Article XXIII and the Tower Density specification defined in Article XXII.
- C. The Board, at its discretion, may exempt certain communication towers that are designed for and intended to be used solely by public safety or emergency communications agencies.
- D. Towers designed to support wind turbines for electricity production or irrigation water pumping are exempt from this ordinance.

X. Tower Liability

- A. Prior to granting a tower zoning permit, the applicant will demonstrate proof to the Town Board that it has adequate liability insurance for the communication tower, support structures, and any and all easements or non-public access roads. The liability insurance will cover accidents within the boundaries of the tower as shown on the site plan, personnel falls from the tower (whether employees or agents of the applicant or not), and private property damage caused by the tower, or debris from the tower.

XI. Tower Inspections

- A. Towers shall be inspected in accordance with FCC or other applicable directives or at least once every thirty-six (36) months by the owner or his/her representative.
- B. A checklist provided by the Town Board, based upon applicable BIA-222 standards, shall be used for each tower inspection.
- C. Inspection records shall be kept by the tower owner and made available upon request to the Town Board.
- D. The Town Board may, at its discretion or by complaint, inspect or require the inspection of any tower within its jurisdiction at the tower owner's or operator's cost.

XII. Electromagnetic Interference

A. Radio and Television

- 1. The applicant shall be held responsible to resolve any signal interference complaints associated with the communications tower(s) or related equipment. This section shall be applicable for the operating lifetime of the tower and tower equipment. If the applicant fails to respond to complaints and resolve interference problems in a reasonable amount of time, the Town Board shall have the authority to require the tower owner or operator to cease operations until the problem is solved.

B. Public Safety Telecommunications

- 1. No new or existing telecommunications service shall interfere with public safety telecommunications. All tower construction applications shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the Town at least thirty calendar days in advance of such changes and will allow the Town Board or its designated representatives to monitor interference levels during the testing process.

XIII. Non-Ionizing Electromagnetic Radiation (NIER).

- A. A source of non-ionizing electromagnetic radiation (NIER), when combined with existing sources of NIER, shall not expose the general public to ambient radiation exceeding standards established by ANSI C-95.1 or applicable Environmental Protection Agency regulations.

XIV. Security

- A. Eight (8) feet high security fencing, with barbed wire, shall be required around the base of the tower.
- B. Accessory or equipment buildings installed as part of the tower facility shall be secured.

XV. Access Roads

- A. Access roads shall be constructed so as to meet the following requirements:
 - 1. Access road construction plans shall be designed to minimize adverse environmental impact.
 - 2. The access road shall be constructed so as to minimize soil erosion.
 - 3. Access roads shall be designed and routed to so as to minimize the loss of agricultural crop land.
 - 4. No communication tower access road shall cross or otherwise be sited on, in, or within 100 feet of wetlands or rivers.
- B. Communication tower access roads are exempt from the Town of Montrose driveway ordinance.
- C. Communication tower access roads are subject to all provisions contained in the Town of Montrose Land Use Plan.

XVI. Signs and Advertising

- A. Appropriate signage shall be posted indicating that trespassing and/or vandalism to the property may be punishable under local, state, or federal statutes.
- B. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

XVII. Accessory Buildings

- A. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district.
- B. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding area or neighborhood.

XVIII. Structurally Unsafe or Unused Towers.

- A. Any tower found to be structurally unsafe and that cannot be brought into compliance within 180 days must be removed at the owner's expense.
- B. Any tower that is no longer used and maintained as a communication tower for a period of one (1) year shall be removed at the owner's expense.

XIX. Tower Removal

- A. The applicant shall be responsible for removing the tower when either:
 - 1. the tower has reached the end of its useful life, or,
 - 2. the tower is classified as Structurally Unsafe or Unused.
- B. The applicant will be required to post a bond or establish an escrow account that is equal to ten (10) percent of the tower's construction cost to protect the Town's interest in the event the

applicant fails to remove the tower in a timely manner when required to do so.

- C. If the Tower is located in public land, or if is located in plain site of public roads or residential areas, the applicant will be required to restore the tower site to its original condition. This includes the removal of the tower, tower support equipment, accessory buildings, security fences and all other equipment and structures. The applicant is also required to restore or replant native vegetation at the tower site and along the access road.
- D. In the event that the tower applicant fails to restore the land to its pre-tower condition to the satisfaction of the Town Board, the applicant will forfeit its tower removal bond.

XX. Landscaping and Screening

- A. On site vegetation shall be preserved to the maximum extent practical.
- B. Where the site abuts or is in direct view of residentially developed land, residential zoning districts, agricultural zoning districts, public land or streets, the site perimeter shall be landscaped with at least one row of deciduous trees, not less than 1 1/2 inches in diameter measured three feet above the grade, spaced not more than 20 feet apart and within 25 feet of the site boundary, as well as at least one row of evergreen trees or shrubs, at least four feet high when planted and spaced not more than 15 feet apart and within 40 feet of the site boundary. Alternatives such as walls or fences may be permitted based on security or other reasons.

XXI. Periodic Review

- A. The Town Board reserves the right to review the status of the tower every two years. The review is intended to allow the Board to consider the following:
 - 1. Changes in Federal, State, or County laws that affect the tower site;
 - 2. Changes in technology which may obviate the continued need for the tower;
 - 3. Changes in land use patterns which may be antithetical to the existence of the tower;
 - 4. Compliance with a conditional use permit compliance (if applicable);
 - 5. Public comment on the tower and its impact on their homes, farms, business and quality of life.
- B. The review may be initiated at the behest of the Town Board
- C. The review may also be initiated by the citizens of Montrose by requesting a tower review at a regularly scheduled Town Board meeting.

XXII. Tower Density

- A. The total number of communication towers located in Montrose shall be limited as follows

- B. There shall be no more than two (2) towers greater than 100 feet in height.
- C. There shall be no more than three (3) towers greater than 60 feet in height.
- D. The total number of tower located in Montrose shall be limited to four (4) regardless of the tower height.

XXIII. Collocation Requirements

- A. All telecommunication towers erected, constructed, or located within the Town of Montrose shall comply with the following requirements:
 - 1. A proposal for a new tower shall not be approved unless the Town Board finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower due to one or more of the following reasons:
 - a) The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - b) The planned equipment would cause interference that materially impacts the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
 - c) Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
 - B. Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three additional users if the tower is over 100 feet in height, or for at least two additional users if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

XXIV. Public Notification of Tower Application

- A. Upon receipt of a communication tower application, the Town Board will hold a public hearing on the application at the next scheduled regular board meeting, but no less than thirty (30) days hence.
- B. The Town Clerk will notify all residents and businesses within a two (2) mile radius of the reason for the public hearing and the notification shall take place at least 30 days prior to the scheduled meeting date.